

**ATTORNEY GENERAL'S REPORT REGARDING THE
NOVEMBER 7, 2019, OFFICER-INVOLVED SHOOTING
INCIDENT IN OSS�PEE, NEW HAMPSHIRE**

I. INTRODUCTION

New Hampshire Attorney General John M. Formella announces the completion of the investigation into the officer-involved shooting incident that occurred in Ossipee, New Hampshire, on November 7, 2019, that resulted in the nonfatal shooting of John Swanson (age 57). The purpose of this report is to summarize the Attorney General's factual findings and legal conclusions regarding the use of deadly force. The findings and conclusions in this report are based upon information gathered during the investigation, including viewing the scene of the incident as well as photographs of the scene, listening to recorded interviews of witnesses, and reviewing numerous official reports generated during the investigation.

As provided by RSA 7:6 and RSA 21-M:3-b, the Attorney General is the State's Chief Law Enforcement Officer. The Attorney General has the responsibility to ensure that whenever law enforcement officers use deadly force, it is done in conformity with the law.

When reviewing the use of deadly force by law enforcement officers, the Attorney General does not investigate or opine on the procedures or tactics used by the officers. Instead, the Attorney General's review of officer-involved use of deadly force incidents consists of a criminal investigation, which is limited to determining whether officers complied with the applicable law.

Following a full investigation of this deadly force incident by the Attorney General's Office and the New Hampshire State Police Major Crime Unit, the Attorney General finds that New Hampshire State Police Troopers Nicholas Levesque's, Nicholas Cyr's, and Michael

Cedrone's use of deadly force against John Swanson on November 7, 2019, was legally justified.¹

II. SUMMARY OF THE FACTS

At about 3:37 a.m. on November 4, 2019, Irene Baker of Tuftonboro, New Hampshire, called 911 to report that her friend, Patricia Swanson, had called and told her that Mrs. Swanson's son, John Swanson, was yelling and screaming at her.² Mrs. Swanson had asked Ms. Baker to call the police. As a result of this report, Patrolman Tyler Eldridge of the Ossipee Police Department responded to Mrs. Swanson's residence at 35 Oakwood Drive.

As he approached the area of the residence, Patrolman Eldridge observed a vehicle speeding down Oakwood Drive without its headlights on. The officer signaled for the vehicle to stop, which it did. The officer observed a very distraught female driver, later identified as Patricia Swanson, driving the vehicle. Mrs. Swanson was extremely shaken, and stated, in substance, "I need to get out of here, I feel like I'm going to pass out."

Patrolman Eldridge escorted Mrs. Swanson to a nearby store, where he attempted to obtain additional information. Mrs. Swanson explained that she had awoken to her son yelling and that his actions worried her. She also stated that Mr. Swanson had a history of mental illness and that he had recently changed his medication and she feared that the new medication was not working. She further advised that Mr. Swanson may have a firearm in the house and gave Patrolman Eldridge permission to enter the residence. Emergency medical services (EMS)

¹ Although Mr. Swanson did not die from Troopers Levesque's, Cyr's, and Cedrone's shooting of him, that conduct still constitutes deadly force under the law. *See* RSA 627:9, II ("Purposely firing a firearm capable of causing serious bodily injury or death in the direction of another person . . . constitutes deadly force.").

² Ms. Baker was interviewed by New Hampshire State Police on November 8, 2019. During the interview, Ms. Baker stated that she and Mrs. Swanson had known each other for five years. During that time, Mrs. Swanson had told Ms. Baker that Mr. Swanson was bipolar. Ms. Baker believes that Mrs. Swanson was afraid of Mr. Swanson, as Mrs. Swanson has stayed with Ms. Baker in the past and in hotels when Mr. Swanson had issues and was acting up.

responded to the area and evaluated Mrs. Swanson. Ultimately, Mrs. Swanson was transported to Huggins Hospital due to her anxiety.

After speaking with Mrs. Swanson, Patrolman Eldridge, along with New Hampshire State Police Trooper John Harris, who had arrived on scene, responded to the residence to speak with Mr. Swanson. As Patrolman Eldridge approached the residence, he heard a male talking inside of it. According to Patrolman Eldridge, he knocked on the door and identified himself as the police. In response, the male inside, later identified as John Swanson, began screaming at the officer, telling him to go away and that the officer had no right to be there. Mr. Swanson repeatedly yelled, in substance, “You need to go get a lawyer.” When Patrolman Eldridge advised Mr. Swanson that he needed to speak with him, Mr. Swanson told the officer to “fuck off” and then ran up a flight of stairs inside of the residence. Fearing for his safety, having been advised that Mr. Swanson may have a firearm, Patrolman Eldridge and Trooper Harris entered the residence and instructed Mr. Swanson to come downstairs and sit down. Mr. Swanson complied and apologized for his actions.³

Upon observing Mr. Swanson, Patrolman Eldridge noted that he appeared extremely “amped up.” Concerned for Mr. Swanson’s well-being, the officer asked Mr. Swanson if he would allow EMS to evaluate him, to which Mr. Swanson agreed. EMS evaluated Mr. Swanson and Mr. Swanson was thereafter transported to Memorial Hospital.⁴ Mr. Swanson checked into Memorial Hospital at about 5:09 a.m.

³ Mr. Swanson’s account of this interaction with law enforcement differs from Patrolman Eldridge’s account and is detailed later in this report.

⁴ After leaving the residence, Patrolman Eldridge responded to Huggins Hospital to speak further with Mrs. Swanson. However, Mrs. Swanson refused to answer any of the officer’s questions and refused all assistance the officer offered. After her release from the hospital, Mrs. Swanson did not return to her residence prior to the November 7, 2019 shooting incident.

That same day, November 4, 2019, Mr. Swanson checked out of the hospital at about 7:04 a.m. Thereafter, and continuing for several days, he made more than twenty-five calls to 911.⁵ During many of these calls, Mr. Swanson was aggressive, belligerent, and profane towards the dispatchers. He also often accused the police of stealing a revolver from his residence and demanded it be returned or he would sue. He further repeatedly instructed that no police were to come to his residence but must instead call him. In one call, he said that if police came to his residence he would “shoot their ass.” At about 5:49 p.m., on November 6, 2019, Sergeant Justin Swift of the Ossipee Police Department called Mr. Swanson. During the call, Mr. Swanson stated, in substance, “If I don’t get that fucking gun back, it’s going to be a bullet in your head.” Likewise, during a call between Patrolman Eldridge and Mr. Swanson, at about 1:38 a.m. on November 7, 2019, Mr. Swanson stated, in substance, “Don’t come here, I’ll kill you all.”

Later in the morning on November 7, 2019, at about 8:00 a.m., Laurie Walton of 26 Oakwood Drive was outside in her yard with two men who were doing yardwork on her property.⁶ According to Mrs. Walton, at this time, she heard Mr. Swanson outside of his residence shouting, in substance, “I am gonna shoot someone, I am gonna kill them all.” Mrs. Walton called the Ossipee Police Department and reported Mr. Swanson’s behavior. As the day went on, Mrs. Walton observed Mr. Swanson exiting his residence about every twenty minutes and yelling, in substance, that he was “going to kill someone.” At about 1:00 p.m., Mrs. Walton heard a gunshot. Thereafter, she heard several gunshots coming from Mr. Swanson’s residence, but was unsure if the shots came from inside or outside of the residence.⁷ Sometime later that

⁵ As noted below, during his January 8, 2020, interview, Mr. Swanson stated that he did not remember calling the police on the day that he went to Memorial Hospital or on the day of the shooting incident.

⁶ Laurie Walton was interviewed by New Hampshire State Police on November 8, 2019.

⁷ Mr. Swanson’s account of his behavior and activities on November 7, 2019, prior to the shooting incident, differ from Mrs. Walton’s account and are detailed later in this report.

day, the police instructed Mrs. Walton and two contractors working on her property to go into the basement of the Walton's residence and stay there, which they did.⁸

That same day, November 7, 2019, the Ossipee Police Department obtained an arrest warrant for Mr. Swanson for two counts of criminal threatening in connection with the statements he made to Sergeant Swift and Patrolman Eldridge on November 6, 2019, and November 7, 2019, respectively. The police also obtained a search warrant for Mr. Swanson's residence for any firearms or other deadly weapons. Both the Ossipee Police Department and Mrs. Swanson obtained Certificates for Involuntary Emergency Admission (IEA), seeking to admit Mr. Swanson because they believed he posed a danger to himself.⁹ Mrs. Swanson also obtained a temporary restraining order against Mr. Swanson, prohibiting him from having contact with her or entering the residence at 35 Oakwood Drive.

The Ossipee Police Department requested assistance from the New Hampshire State Police Special Weapons and Tactics (SWAT) Unit in serving the various paperwork upon Mr. Swanson after completing a risk assessment regarding the service of the aforementioned paperwork. As a result, at about 2:44 p.m. on November 7, 2019, several members of the State Police SWAT Unit and the Ossipee Police Department responded to 35 Oakwood Drive in Ossipee to serve the various paperwork upon Mr. Swanson. Upon arrival, the law enforcement officers set a perimeter around the residence and attempted to contact Mr. Swanson using a public address (PA) system in a police cruiser.¹⁰ While attempting to communicate with Mr. Swanson, the law enforcement officers on scene heard two "pops" coming from the residence,

⁸ These were different individuals from the men who had been doing yardwork earlier in the day. Investigators attempted to speak with the workers at the Walton's residence that day, however, they either could not be reached or reported that they did not hear anything from Mr. Swanson.

⁹ IEA paperwork permits a person to be taken into custody for a mental health evaluation.

¹⁰ Initially, officers attempted to contact Mr. Swanson by calling the landline telephone number associated with the residence. However, the landline appeared to have been disconnected, and the police did not have a cellular telephone number for Mr. Swanson.

but could not confirm that what they heard were gunshots. Shortly thereafter, they heard several distinct gunshots coming from the residence. As a result, at about 3:44 p.m., a full State Police SWAT Unit activation to the residence occurred.

As additional SWAT members arrived, they relieved the Ossipee officers on the perimeter and added additional perimeter units and positioned the BEAR in the driveway of the residence.¹¹ Using the BEAR's PA system, State Police negotiators hailed Mr. Swanson. The accounts provided by the Troopers on scene diverge from Mr. Swanson's account with respect to the substance of the hailed statements. Troopers reported that the negotiators instructed Mr. Swanson to exit the residence with his hands visible and empty. Mr. Swanson reported that he was instructed to exit the residence with his guns.

At about 6:58 p.m., the SWAT Unit decided to move forward with a gas plan to force Mr. Swanson from the residence.¹² Over the next hour, numerous gas rounds were introduced into the residence.¹³ At about 7:49 p.m., Mr. Swanson exited the B-side of the residence.¹⁴ The accounts provided by the three Troopers that fired upon Mr. Swanson diverge in material respects to Mr. Swanson's account of what happened after he exited the residence. Those differing accounts are detailed later in this report. All the men, including Mr. Swanson, gave accounts that support that Mr. Swanson was holding a firearm when he exited the residence, and that Mr. Swanson was shot after exiting the residence.

¹¹ The BEAR is the State Police's armored truck. The BEAR is not equipped with cameras or any audio or visual recording devices.

¹² The introduction of gas into an area is a non-lethal, tactical tool used to force people to and from certain locations/areas.

¹³ The gas rounds were introduced by firing the rounds through windows of the residence.

¹⁴ The following reference points apply to the residence and property: A-Side is the front of the residence, B-Side is the left side of the residence, C-Side is the backside of the residence, and D-Side is the right side of the residence. These sides are from a vantage point of someone in the driveway of the residence facing the residence. Fig. 1.

Mr. Swanson was wounded as a result of being fired upon and was hospitalized for his injuries. He sustained gunshot wounds to his left shoulder, right forearm, and left and right buttock. Evidence establishes that Sergeant Nicholas Levesque, Trooper First Class Nicholas Cyr, and Sergeant Michael Cedrone each fired numerous shots at Mr. Swanson from their SWAT-issued rifles. After the incident, the weapon that Mr. Swanson was holding was examined. It was a rifle with one round in the chamber and no rounds in the magazine. Testing confirmed that Mr. Swanson's rifle was operable.¹⁵

III. THE INVESTIGATION

A. Interviews with the Troopers who Discharged their Weapons

There were three New Hampshire State Police Troopers who discharged their weapons during the incident, Sergeant Nicholas Levesque, Trooper First Class Nicholas Cyr, and Sergeant Michael Cedrone. All were interviewed and have been fully cooperative with the investigation. Their interviews are summarized below.

1. Sergeant Nicholas Levesque

Sergeant Nicholas Levesque was interviewed by members of the Office of the Attorney General and investigators from the New Hampshire State Police Major Crime Unit on November 15, 2019, in the presence of counsel, and by an investigator from the New Hampshire State Police Major Crime Unit on January 14, 2020, without counsel. Sergeant Levesque has been a member of the New Hampshire State Police for seven-and-a-half years. He has also been a member of the New Hampshire State Police SWAT Unit for about the past six-and-a-half years. Prior to joining the State Police, Sergeant Levesque was a member of the United States Marine

¹⁵ The firearm was examined, and test fired at the New Hampshire State Police Forensic Laboratory.

Corps for six years. The Sergeant was up to date on his firearms qualifications, and had discharged his firearm while on duty on one occasion prior to the November 7, 2019 incident.¹⁶

On November 7, 2019, Sergeant Levesque was working a daytime detail at the New Hampshire State House. During the detail, the Sergeant learned about a developing situation in Ossipee and that the Ossipee Police Department had requested tactical assistance in executing an arrest warrant upon a male, later identified as John Swanson. It was determined that Sergeant Levesque, along with New Hampshire State Police SWAT members Troopers Maxim King, Samuel Fuller, and Christopher O'Toole, as well as State Police negotiators, Troopers Hawley Rae and Charles Newton, would respond to Ossipee to assist.

At about 2:45 p.m., Sergeant Levesque, along with other state and local law enforcement officers, arrived at Mr. Swanson's residence at 35 Oakwood Drive.¹⁷ After setting a perimeter around the residence, Ossipee officers attempted to communicate with Mr. Swanson via the PA system in an Ossipee police cruiser. When State Police negotiators arrived, they took over the attempts to communicate with Mr. Swanson. The law enforcement officers identified themselves as the police and asked Mr. Swanson to come out of the residence. In response, Sergeant Levesque heard Mr. Swanson yell statements, such as, "no," "you come inside," and "come where I can see you." Mr. Swanson was yelling from a second-floor, B-side window of the residence. Fig. 2.

During the communications, Sergeant Levesque heard two "muffled pops." The Sergeant was unable to confirm that what he heard were gunshots, but law enforcement officers positioned

¹⁶ Sergeant Levesque previously discharged his firearm while on duty in May 2016. At the time he discharged his weapon, a suspect had just shot and wounded two Manchester Police Officers. Sergeant Levesque shot at the suspect but missed. No injuries resulted from Sergeant Levesque discharging his firearm on this occasion.

¹⁷ The law enforcement officers that responded to 35 Oakwood Drive, at this time, were: Sergeant Levesque, and Troopers King and Fuller of the New Hampshire State Police, as well as Chief Joseph Duchesne, Lieutenant Anthony Castaldo, Sergeant Robert Ripley, Sergeant Justin Swift, Detective Jason Baker, and Patrolman Ethan Recco of the Ossipee Police Department.

on the perimeter of the property reported that the sounds appeared to have come from the residence. About ten minutes later, Sergeant Levesque heard three or four rapid, distinct gunshots. All the perimeter units confirmed that they had not fired, that they had heard the gunshots as well, and that the gunshots had come from the residence. At that time, Sergeant Levesque suspended communications with Mr. Swanson and requested a full State Police SWAT Unit activation.

Sergeant Levesque then took a perimeter position on the B-side of the property, by a pontoon boat. Fig. 3. The Sergeant was wearing a Multicam-brand camouflaged uniform, a gray wind/waterproof jacket, and a helmet, which was equipped with night vision equipment. The Sergeant had State Police patches on his shoulders and a State Police plate carrier across his torso. He was also equipped with his pistol and Heckler & Koch 416 rifle, which was the standard issued rifle for the SWAT Unit. His rifle had a thirty-round magazine with twenty-seven rounds in it and one round in the chamber.¹⁸ His rifle also had a suppressor attached to the end of the barrel.¹⁹ The Sergeant was not wearing a body camera. The New Hampshire State Police SWAT Unit members at that time did not wear body cameras. Nor are there any known video or audio recordings of the shooting incident.

At the time he took his perimeter position, Sergeant Levesque knew that Mr. Swanson had threatened to shoot Ossipee officers if they came to his residence, that Mr. Swanson had been in his front yard earlier that day yelling that he was going to kill everyone, that Mr. Swanson had a criminal history and was flagged as “armed and dangerous” out of Florida, that Mr. Swanson’s mother was afraid to go home because she feared her son was going to kill her,

¹⁸ It is standard operating procedure for SWAT members to carry only twenty-eight rounds in their thirty round magazine.

¹⁹ A suppressor minimizes the sound the rifle makes when fired.

that Mr. Swanson had a firearm in the house, that Mr. Swanson had a military background, and that Mr. Swanson scored a thirty on a warrant service risk assessment.²⁰

As additional SWAT members arrived, they replaced the Ossipee officers on the perimeter of the property and increased the number of perimeter units. As the perimeter was being reset, Sergeant Levesque occasionally observed Mr. Swanson, at the second-floor, B-side window, yelling statements, such as, “fake ass cops,” “what you heard was firecrackers,” and asking the law enforcement officers to come inside the residence.

Once the perimeter was set with all SWAT members, and the BEAR was parked in the driveway of the residence, the State Police negotiators reopened communications with Mr. Swanson.²¹ Through the PA system in the BEAR, the negotiators informed Mr. Swanson that he

²⁰ “A Risk Assessment is a threat assessment guideline, used to determine appropriate resources and strategy, based on a quantified level of risk.” Utah Search Warrant Service Model Guidelines, at <https://site.utah.gov/dps-post/wp-content/uploads/sites/24/2015/02/Model-Search-Warrant-Policy-Revised-Final-Draft-042715.pdf> (last visited Jan. 6, 2020) (explaining a warrant service risk assessment). The FBI recommends that any warrant-service situation that produces a score of twenty-six or higher on the assessment be conducted with a tactical team.

²¹ The following were the State Police personnel on scene at the time of the shooting incident:

New Hampshire State Police SWAT Unit personnel on scene:

1. Trooper Maxim King (Marksman Observer – A-side)
2. Sergeant Nicholas Levesque (Marksman Observer – A/B corner)
3. Trooper First Class Nicholas Cyr (Assistant Team Leader – A/B corner)
4. Trooper Matthew Merrill (Perimeter – B-side)
5. Sergeant Michael Cedrone (Gas Operator – B-side)
6. Trooper Ryan St. Cyr (Perimeter – B-side)
7. Trooper Noah Sanctuary (Perimeter – B-side)
8. Trooper Christopher O’Toole (Marksman Observer – C-side)
9. Trooper Stefan Wagner (Gas Operator – C-side)
10. Trooper Samuel Fuller (Marksman Observer – D-side)
11. Trooper Anthony Cattabriga (Perimeter K-9 – D-side)
12. Trooper Aramus Caraballo (Tactical Medical Support – D-side)
13. Sergeant Gary Ingham (Immediate Response Team/K-9 staged in BEAR)
14. Sergeant Christopher Ladd (Immediate Response Team/Tactical Medical Support staged in BEAR)
15. Trooper William Neilsen (Immediate Response Team/Less Lethal Munitions staged in BEAR)
16. Trooper First Class Shane Larkin (Immediate Response Team/Assistant Team Leader staged in BEAR)
17. Sergeant Gerard Ditolla (Team Leader staged in BEAR)

New Hampshire State Police personnel in support of SWAT Unit:

1. Trooper First Class Matthew Partington (Explosive Ordinance Disposal staged in BEAR)
2. Trooper Charles Newton (Crisis Negotiations Unit staged in BEAR)
3. Trooper Hawley Rae (Crisis Negotiations Unit staged in BEAR)
4. Trooper Daniel Livingstone (BEAR driver)

was under arrest and that they had a search warrant for the residence. They also asked Mr. Swanson to please come out of the residence through the front door. Mr. Swanson did not comply. Instead, he continued to yell from the second-floor, B-side window.

It was determined that the SWAT Unit would move forward with the plan to put CS (tear gas) gas into the home to encourage Mr. Swanson to come out and surrender himself on the warrant. Sergeant Michael Cedrone and Trooper Stephan Wagner, who were positioned on the B- and C-side of the property, respectively, deployed gas rounds through exterior, second-floor windows into the residence. The goal was to first force Mr. Swanson from the second floor to the first floor of the residence. After the gas was introduced, Sergeant Levesque observed Mr. Swanson yell, in substance, “fuck you guys, fucking assholes,” “go fuck yourselves,” and “come in here and get me.” The Sergeant then saw Mr. Swanson break out the second-floor, B-side window and heard Trooper Matthew Merrill, who was positioned with Sergeant Cedrone on the B-side of the property, report over the radio that he saw Mr. Swanson using a rifle to break out the window.²²

Eventually, Sergeant Cedrone and Trooper Merrill moved to another B-side perimeter position to get a better angle from which to deploy the gas rounds. Sergeant Cedrone then deployed additional rounds into the second-floor, B-side window. Thereafter, Mr. Swanson was seen down on the first floor of the residence. In response, Sergeant Cedrone and Trooper Wagner deployed gas rounds into first-floor, B- and C-side windows, respectively, in an effort to drive Mr. Swanson to exit the residence. At some point, Sergeant Cedrone and Trooper Wagner each began to run low on gas rounds, and it was determined that Troopers in the BEAR would begin to prepare bags of additional gas rounds for each of them.

²² There are no audio recordings of the SWAT Unit’s radio transmissions on the day of the shooting incident. The SWAT Unit radio transmissions are not recorded.

Shortly thereafter, Sergeant Levesque observed Mr. Swanson outside of the residence, on the B-side of the property, moving fast, in a crouched position, towards the B-side perimeter units and the BEAR. The Sergeant observed something in Mr. Swanson's hands around his waist, and then he heard the racking of a rifle.²³ The Sergeant knew that the racking sound had not come from a perimeter unit because the SWAT members on the perimeter would have racked a round into the chamber of their rifles before taking their perimeter positions, and the sound was different from the sound that their SWAT-issued rifles make when racking a round into the chamber. The Sergeant heard Trooper Merrill communicate over the radio that Mr. Swanson had just racked a rifle. Within seconds of observing Mr. Swanson outside of the residence, the Sergeant heard an unsuppressed gunshot. The Sergeant knew that the gunshot had not come from a perimeter unit, as all the SWAT members on the perimeter used suppressed rifles. At the time he heard the unsuppressed gunshot, Mr. Swanson was about fifteen to twenty yards away from Sergeant Levesque and was facing towards the B-side perimeter units.

After hearing the unsuppressed gunshot, Sergeant Levesque immediately fired several rounds at Mr. Swanson. In his interview, he articulated how he fired to defend himself as well as the other nearby perimeter units and Troopers in the BEAR from Mr. Swanson's immediate use of deadly force. After firing, Sergeant Levesque lost sight of Mr. Swanson, so the Sergeant moved his position. The Sergeant then saw Mr. Swanson running towards the backyard with his hands in front of him, as if he was carrying something.²⁴ The Sergeant fired several additional rounds at Mr. Swanson, stopping when Mr. Swanson dropped to the ground. The Sergeant stated how he fired these additional rounds because Mr. Swanson had just fired upon Troopers with a

²³ Racking a semi-automatic firearm moves a round of ammunition into the chamber, making the firearm ready to fire.

²⁴ When he moved positions, the Sergeant did not see Mr. Swanson's rifle on the ground, so it did not appear to the Sergeant that Mr. Swanson had dropped or put down his weapon.

rifle, was heading towards additional perimeter units, and if Mr. Swanson broke through the perimeter, private citizens in the nearby houses, golf course, and roadways could be in danger.²⁵ At no point, after exiting the residence, did Mr. Swanson give any indication that he intended to surrender.

Sergeant Levesque saw Mr. Swanson laying on the ground on the C-side of the property, but due to Mr. Swanson's position, the Sergeant could not determine whether Mr. Swanson was still holding the rifle or any other weapon. It was determined that Sergeant Gary Ingham would utilize his police dog to assist in the apprehension of Mr. Swanson. The dog approached Mr. Swanson and engaged him by biting him. In response, Mr. Swanson grabbed the dog, the dog howled and disengaged, and then reengaged. Through this interaction, SWAT members were able confirm that Mr. Swanson was not holding a weapon and it was safe to approach.

As Sergeant Levesque quickly approached Mr. Swanson, he observed a rifle under Mr. Swanson's feet and moved it aside for safety reasons. The Sergeant also observed what appeared to be gunshot wounds to Mr. Swanson's forearm, shoulder, and his legs/hips. The Sergeant heard Mr. Swanson yelling for the SWAT members to kill him. In response, the Troopers explained that they were going to get him help. Ambulance and emergency medical personnel who had been staging nearby arrived quickly and began treating Mr. Swanson's injuries.

2. Trooper First Class Nicholas Cyr

Trooper First Class Nicholas Cyr was interviewed by members of the Office of the Attorney General and investigators from the New Hampshire State Police Major Crime Unit in the presence of his counsel on November 19, 2019. Trooper First Class Cyr has been a member of the New Hampshire State Police for fifteen years. He has also been a member of the New

²⁵ The Sergeant was familiar with the area and knew that there were residences, a convenience store, a golf course, a construction site, and several roadways, including Route 16, all nearby.

Hampshire State Police SWAT Unit for about the past eight years. Prior to joining the State Police, Trooper First Class Cyr was a member of the United States Marine Corps for four years. The day of this incident, Trooper was up to date on his firearms qualifications, and had never discharged his firearm outside of a non-training/non-wildlife situation before the November 7, 2019, incident.

On November 7, 2019, Trooper First Class Cyr worked a daytime detail at the New Hampshire State House. Shortly after the detail ended, the Trooper received a call from Sergeant Nicholas Levesque, explaining that the Ossipee Police Department was asking for assistance with the execution of an arrest warrant for misdemeanor criminal threatening and a search warrant for a residence for weapons. The Trooper also learned that the subject of the arrest warrant, later identified as John Swanson, had threatened to kill a neighbor and police officers, and possibly had a rifle in his residence. He was also advised that Mr. Swanson's mother, who Mr. Swanson lived with, was afraid to go home because she feared he would kill her. The Trooper knew that Sergeant Levesque, along with Troopers Maxim King, Samuel Fuller, and Christopher O'Toole, were sent to Ossipee to assist.

As the day continued, Trooper First Class Cyr continued to receive updates about the status of the situation. The Trooper learned that Mr. Swanson was not complying with law enforcement officers' demands for him to exit the residence, and was yelling statements from the residence, such as "fake cops" and was asking the police to come into the open where he could see them. At one point, the Trooper learned that law enforcement officers on scene had heard two "pops" coming from inside the residence, but that they could not confirm that what they heard were gunshots. Shortly thereafter, Trooper First Class Cyr learned that the law

enforcement officers on scene had heard three or four distinct gunshots coming from the residence. As a result, a full SWAT Unit activation occurred.

Trooper First Class Cyr arrived at 35 Oakwood Drive in Ossipee around 5:00 p.m. Upon arrival, the Trooper put on his multicam camouflaged rain jacket, duty belt, and helmet, which was equipped with night vision equipment. Over his jacket, the Trooper put on a plate carrier that stated, "State Police." The Trooper also equipped himself with his Smith & Wesson M&P pistol and Heckler & Koch 416 rifle. His rifle had a thirty-round magazine with twenty-seven rounds in the magazine and one round in the chamber. His rifle also had a suppressor attached to the end of the barrel.

Trooper First Class Cyr met up with Sergeant Levesque at a perimeter position on the A/B-side of the property near a pontoon boat. Sergeant Levesque provided the Trooper with additional updates, including that Mr. Swanson was alone in the residence, and that the State Police negotiators had been trying to communicate with him, but Mr. Swanson would only yell at them from the second-floor, B-side window of the residence. The Sergeant also explained that there were other perimeter units, including Ossipee officers, located around the property and that there were residents in a nearby house and possibly other residents in the vicinity, as well.²⁶ While receiving these updates, Trooper First Class Cyr observed Mr. Swanson in the second-floor, B-side window yelling statements, such as, "fake cops" and "go fuck yourselves."²⁷ The Trooper could also hear the negotiators telling Mr. Swanson that they were law enforcement and that he needed to come out of the residence with his hands up.

²⁶ At about 4:09 p.m., law enforcement officers attempted to evacuate the neighborhood. Most residents were summer residents only, and, therefore, were not present.

²⁷ While it was dark outside and inside the residence, Trooper First Class Cyr could see Mr. Swanson inside the house because Mr. Swanson was carrying what appeared to be a flashlight that illuminated him.

As additional SWAT members arrived, they replaced the Ossipee officers positioned on the perimeter and increased the number of perimeter units, and the BEAR was positioned in the driveway of the property. The BEAR was labeled "New Hampshire State Police" on both sides of the truck, and when it was driven into the driveway, the lights and siren were activated. From the public address (PA) system in the BEAR, the negotiators repeatedly announced that they were State Police, that they had arrest and search warrants to execute, and instructed Mr. Swanson to come out of the residence. In response, Trooper First Class Cyr observed Mr. Swanson periodically yell from the second-floor, B-side window statements, such as, "fake cops," "go away," "I'm not coming out," and "I'm gonna kill anyone of you I can see." At one point, Mr. Swanson yelled to negotiator Trooper Hawley Rae, in substance, "I'll come out and fuck you, that's it."

It was determined that the SWAT Unit would move forward with a gas plan. Both Sergeant Michael Cedrone and Trooper Stephan Wagner, who were positioned on the A/B- and C-side of the property, respectively, deployed gas rounds through the windows of the residence. In response to the introduction of gas, Trooper First Class Cyr observed Mr. Swanson come to the second-floor, B-side window and yell, in substance, "I'll kill anyone of you if I see you." Shortly thereafter, he saw Mr. Swanson smash out the second-floor, B-side window, and heard Trooper Matthew Merrill report over the radio that Mr. Swanson was smashing out the window with the buttstock of a rifle.

Thereafter, Mr. Swanson was seen on the first floor of the residence. He then came to a first-floor, B-side window, and Trooper First Class Cyr heard him yell, in substance, "you're all a bunch of assholes, I'm not coming out you better get ready I'm gonna be in here a long time." Sergeant Cedrone and Trooper Wagner then deployed gas rounds into the first floor. In

response, Mr. Swanson yelled, in substance, “it’s a cover up,” “this is all being videotaped,” and that his “mother was buried in the basement and that [the police] are using tear gas to cover it up.” Trooper First Class Cyr then heard Mr. Swanson come out the front door of the residence, yell, and then go back inside.

At this point, Trooper First Class Cyr had Sergeant Cedrone and Trooper Merrill move to a flat B-side perimeter position, which would allow Sergeant Cedrone to deploy gas rounds further into the residence, with the hope that it would force Mr. Swanson out of the residence through the front door. After relocating on the perimeter, Sergeant Cedrone deployed gas rounds into first-floor, B-side windows. In response, Trooper First Class Cyr observed Mr. Swanson come to the windows and yell, in substance, “you fucking assholes, I’m gonna kill you if I see you.”

At some point, both Sergeant Cedrone and Trooper Wagner started running low on gas rounds, and it was determined that Troopers in the BEAR would prepare bags of gas rounds for resupply. Shortly thereafter, Trooper First Class Shane Larkin radioed that the gas was ready, and Sergeant Levesque said he would go get it.²⁸ Trooper First Class Cyr then heard the rear doors of the BEAR being propped open. At that same time, the Trooper saw Mr. Swanson pass by a first-floor, B-side window carrying a rifle in his left hand. The rifle appeared to have an extended magazine enabling it to carry an extra amount of ammunition.

Trooper First Class Cyr communicated his observation of the rifle over the radio to the other members of the SWAT Unit. He then saw Mr. Swanson walk through a door. The Trooper could not see where the door led. Immediately thereafter, he heard the sound of a rifle being racked outside of the residence. He then heard someone over the radio say, in substance,

²⁸ The next sequence of events occurred so quickly that the Sergeant did not have time to leave his perimeter position to get the additional bags of gas rounds.

“he just racked the rifle.” Next, he heard a very loud gunshot and saw a flash of light. The gunshot sounded as if it was directed towards the B-side perimeter units. The gunshot sound was distinctly different from the sound that the SWAT-issued rifles would have made, as all the SWAT members positioned on the perimeter were equipped with rifles with suppressors, which decreases the muzzle flashes and sound when the rifles are fired.

Trooper First Class Cyr pointed his rifle towards where he had seen the flash of light and saw an arm. He then heard at least one more loud, unsuppressed gunshot, and fired his weapon at the arm he saw. He told interviewers that he fired because he feared for his life, the lives of the other nearby SWAT members, and the lives of any private citizens in the area. The Trooper also said that he fired to stop Mr. Swanson “from shooting anymore.”

After he fired, Trooper First Class Cyr saw Mr. Swanson moving towards the C-side of the property. He did not see Mr. Swanson having dropped anything. The Trooper then continued to fire at Mr. Swanson. He explained to investigators that he continued because Mr. Swanson had already fired, at least twice, while outside, and the Trooper feared for the safety of the C-side perimeter units, any persons at the nearby business and golf course, and those travelling on nearby Route 16. Trooper First Class Cyr stopped firing when he lost sight of Mr. Swanson and when he could no longer fire without the risk of hitting C-side perimeter units with his own gunfire. At no point, while outside, did Mr. Swanson attempt to surrender.

Trooper First Class Cyr then heard over the radio that Mr. Swanson was down. He approached and saw Mr. Swanson laying on his side, facing away from the Trooper, near the backyard tree line. He gave commands to Mr. Swanson to roll over onto his back and show his hands, but Mr. Swanson did not comply. The Trooper feared that Mr. Swanson might have a weapon in front of him. For safety reasons, the Trooper asked Sergeant Gary Ingham to utilize

his K9 to help apprehend Mr. Swanson. He saw the dog approach Mr. Swanson and bite him. In response, Mr. Swanson made contact with Grunt, making the dog whimper and release.

Sergeant Ingham gave the K9 the bite command again, and the dog reengaged Mr. Swanson, this time able to roll Mr. Swanson over onto his back and exposing his hands.

Once Mr. Swanson was on his back, SWAT members approached him, giving him commands not to move. As he approached, Trooper First Class Cyr saw a rifle by Mr. Swanson's feet. Mr. Swanson was yelling, in substance, "just shoot me in the head, just shoot me in the head, I just wanna die, just shoot me in the head." The Trooper told him they were going to get him medical aid, and then put him in flex-type handcuffs.

Trooper First Class Cyr observed that Mr. Swanson had an injury to one of his arms, and one of his shoulders appeared to have a bullet wound. The EMS personnel who had been staging nearby were called and arrived quickly to treat Mr. Swanson.

3. Sergeant Michael Cedrone

Sergeant Michael Cedrone was interviewed by members of the Office of the Attorney General and investigators from the New Hampshire State Police Major Crime Unit in the presence of counsel on November 19, 2019. Sergeant Cedrone has been a member of the New Hampshire State Police for fifteen years. He has also been a member of the New Hampshire State Police SWAT Unit for about the past eight years. Sergeant Cedrone was up to date on his firearms qualifications and had never discharged his firearm outside of a non-training/non-wildlife situation before the November 7, 2019, incident.

On November 7, 2019, Sergeant Cedrone worked a daytime security detail. At the conclusion of the detail, the Sergeant reported to the Troop B barracks to prepare to sign off for the day. At about 3:30 p.m., while still at the barracks, the Sergeant received the SWAT

activation to Ossipee. In response, Sergeant Cedrone, along with several other members of the SWAT Unit, responded to the area of 35 Oakwood Drive in Ossipee.

Sergeant Cedrone arrived at the area around 5:30 p.m. Upon arrival, he put on his SWAT gear, which included his tactical belt, tactical vest, and helmet, which was equipped with night vision equipment. The Sergeant had State Police patches on his shoulders and his tactical vest. The Sergeant also equipped himself with his .45 caliber Smith & Wesson M&P 2.0 pistol, Heckler & Koch 416 rifle, and 40 mm gas projectile launcher.

Sergeant Cedrone, along with Trooper Matthew Merrill, took a perimeter position on the A/B-side of the property by a pontoon boat. At this time, the Sergeant was aware that the male subject, later identified as John Swanson, was alone inside the residence, that Mr. Swanson had stopped taking his mental health medication, that there was IEA paperwork for Mr. Swanson, that Mr. Swanson had military ties, that Mr. Swanson had made threats, and that Mr. Swanson had fired shots from inside of the residence earlier that day.

From his perimeter position, Sergeant Cedrone heard State Police negotiators identify themselves as New Hampshire State Police and repeatedly instruct Mr. Swanson to exit the residence with nothing in his hands. At times, he also observed Mr. Swanson shouting from the second-floor, B-side window of the residence.²⁹ Other than certain profane statements, such as “fuck you,” the Sergeant could not understand what Mr. Swanson was yelling from the residence. At no point did Mr. Swanson show any indication of complying with the negotiators’ commands to exit the residence with nothing in his hands.

²⁹ While it was dark both inside and outside of the residence, Sergeant Cedrone was able to see Mr. Swanson when he came to the second-floor window because it appeared that he was carrying a candle or flashlight that illuminated him.

Eventually, it was determined that the team would move forward with a gas plan. The goal was to introduce gas into the residence, making it uncomfortable for Mr. Swanson to remain inside, and forcing him to exit the residence and surrender. Sergeant Cedrone, using his 40 mm gas launcher, deployed several gas rounds into the second-floor, B-side window of the residence. In response to the gas, Mr. Swanson continued to yell from the window, and broke out the window's glass with what appeared to be the buttstock of a rifle. This action was conveyed over the radio to all the SWAT members. The negotiators continued to instruct Mr. Swanson to exit the residence with nothing in his hands.

Shortly thereafter, it was communicated over the radio that Mr. Swanson was now on the first floor of the residence. In an effort to deploy the gas further into the residence, Sergeant Cedrone and Trooper Merrill repositioned themselves to a flat B-side perimeter position, which put them in line with the B-side windows of the residence. The Troopers took cover behind a woodpile in an area of brush on the B-side of the property. Fig. 4. This perimeter location brought the Troopers within about thirty to forty feet of the residence.

From this perimeter position, Sergeant Cedrone introduced several gas rounds into the first-floor windows on the B-side of the residence. The Sergeant could clearly see Mr. Swanson inside the residence on the main floor. He could see that Mr. Swanson had a rag over his face and was yelling that: (1) he had lit the house on fire; (2) that the tear gas was a cover up; and (3) that his mother's body was in the basement, which the Sergeant knew was untrue, as he knew that Mrs. Swanson was safe at another location.

As the negotiators continued to try to communicate with Mr. Swanson and instruct him to exit the residence with nothing in his hands, it appeared to Sergeant Cedrone that Mr. Swanson was staring directly at him from the B-side windows of the residence. While the Sergeant was

confident Mr. Swanson could not see him, he was also aware that because he had deployed the gas rounds from a close proximity, the Sergeant had identified the area of their perimeter position to Mr. Swanson.

Thereafter, Sergeant Cedrone ran out of gas rounds, and it was determined that other SWAT members would resupply him. While waiting for this to occur, Sergeant Cedrone transitioned from the empty 40 mm launcher to his Heckler & Koch 416 rifle. His rifle had a thirty-round magazine with twenty-seven rounds in the magazine and one round in the chamber. Sergeant Cedrone's rifle had a suppressor on the end of the barrel, which significantly reduced the muzzle flash and sound the rifle made when fired.

Sergeant Cedrone heard the rear doors of the BEAR being propped open. At this time, Sergeant Cedrone saw Mr. Swanson through a first-floor window on the B-side of the residence, and heard Trooper First Class Nicholas Cyr say, in substance, "it look like he's coming out" and "he looks like he's got a" Immediately thereafter, Sergeant Cedrone saw Mr. Swanson outside of the residence, on the B-side of the property, walking toward the BEAR, with a rifle in his hand. Fearing for the safety of the Troopers in the BEAR, Sergeant Cedrone attempted to fire his rifle, however, it malfunctioned and did not fire.

Sergeant Cedrone cleared the malfunction by ejecting the unfired round from the chamber and rechambering a new round. The clearing of the rifle made a significant amount of noise. Mr. Swanson then stopped walking towards the BEAR and turned to face the direction of Sergeant Cedrone. At this point, the Sergeant could not see whether Mr. Swanson still had the rifle in his hands. Fearing for his own safety, and the safety of the other perimeter units, Sergeant Cedrone fired several rounds at Mr. Swanson. During this, Mr. Swanson ran towards the backyard – the C-side of the property – and it appeared that he was falling. The Sergeant

stopped firing when Mr. Swanson fell and as he could no longer do so without the risk of hitting his fellow SWAT members positioned on the C-side perimeter with his own gunfire. At some point, Sergeant Cedrone heard a loud noise, which he believes was Mr. Swanson firing his rifle.³⁰ At no point did he perceive any indication verbally or physically from Mr. Swanson that he was intending to surrender.

Sergeant Cedrone, along with Sergeant Levesque and Trooper First Class Cyr, moved towards the backyard. As he did this, Sergeant Cedrone could see Mr. Swanson down on the ground, but, due to a downward slope in the yard, was unable to determine whether Mr. Swanson still had his rifle. The Sergeant, as well as other members of the SWAT Unit, gave Mr. Swanson verbal commands to show his hands. He did not comply.

Due to safety concerns, the decision was made to utilize a police dog to engage onto Mr. Swanson to get him to show his hands, which occurred. Once Mr. Swanson showed his hands, Sergeant Cedrone, along with other members of the SWAT Unit, moved closer to Mr. Swanson. As he made his approach, Sergeant Cedrone saw a rifle on the ground by Mr. Swanson's feet. The Sergeant also observed what he believed were gunshot injuries to Mr. Swanson's forearm, shoulder, and leg. Mr. Swanson was handcuffed. During this time, Sergeant Cedrone heard Mr. Swanson say something to the effect of "just put one in my head." The Sergeant told Mr. Swanson that they were not going to do that, and that he was going to be fine. Within a moment, medical personnel arrived and tended to Mr. Swanson.

B. Other Troopers' Reports and Interview

Reports were obtained from all other New Hampshire State Police Troopers who were positioned on the perimeter at the time of the shooting incident, including those positioned inside

³⁰ During his interview, the Sergeant stated that he was unable to pinpoint exactly when he heard this loud noise during the exchange of gunfire. The Sergeant did not hear Mr. Swanson chamber a round into his rifle.

of the BEAR.³¹ One was also interviewed. None of those Troopers discharged their weapons. Information from the Troopers with the most relevant information is summarized below.

1. Trooper Maxim King

On November 7, 2019, Trooper Maxim King of the New Hampshire State Police, along with Sergeant Nicholas Levesque and Troopers Samuel Fuller and Christopher O'Toole, responded to Ossipee Police Department to assist with serving an arrest warrant. Trooper Maxim was informed that the male subject, later identified as John Swanson, had several warrants, had a history of mental illness, was in possession of a firearm, and had threatened to shoot law enforcement officers if they came to his residence. A plan to surround the residence and call Mr. Swanson was devised.

Upon arrival at Mr. Swanson's residence, Troopers King and Fuller took a perimeter position on the A/D corner of the property about fifty yards from the residence. Sergeant Levesque took a perimeter position on the A/B-side of the property, near a pontoon boat, and the rest of the perimeter was comprised of Ossipee Police Department officers.

After the perimeter units were set, Chief Joseph Duchesne of the Ossipee Police Department began hailing Mr. Swanson, requesting that he exit the residence. Shortly thereafter, Troopers Hawley Rae and Charles Newton of the State Police Crisis Negotiation Unit arrived and took over communications with Mr. Swanson.

During this time, Trooper King heard what he believed to be two or three muffled gunshots, however, he could not confirm that what he heard were gunshots. A few minutes later, Trooper King heard three or four distinct gunshots. Contemporaneously, the Trooper observed

³¹ Reports were also obtained from New Hampshire State Police Troopers and Ossipee Police Department officers who were positioned in the area of 35 Oakwood Drive, but not within the perimeter. Many of these law enforcement officers report hearing an exchange of gunfire, but none report visually observing the exchange.

several leaves and twigs fall to his right, as bullets flew towards a nearby golf course. At this time, negotiations ceased, and a full SWAT activation commenced.

Once additional SWAT members arrived, they relieved the Ossipee officers on perimeter, and the BEAR was parked in the driveway. At this point, Trooper King relocated to the deck of a neighboring house on the A-side of Mr. Swanson's property. Negotiations with Mr. Swanson then continued for several more hours. Trooper King heard Mr. Swanson yelling from the residence but was unable to understand his statements. At one point, Mr. Swanson opened the front door of the residence and yelled "State Police!" several times before closing the door.

Ultimately, the gas plan commenced. At some point after gas had been introduced to the second and then first floors, Trooper King heard two series of gunshots, which he believed were coming from the C-side of the property. When the gunfire began, the Trooper believed he heard one louder, distinctly different gunshot, before hearing the volley of gunfire. Shortly thereafter, the Trooper heard over the radio that Mr. Swanson was down on the ground, and EMS was immediately called. As Mr. Swanson was on the stretcher, the Trooper heard him yell, "I'm alive!"

2. Trooper Hawley Rae

Trooper Hawley Rae was dispatched to 35 Oakwood Drive on November 7, 2019, as part of the Crisis Negotiation Unit for New Hampshire State Police. Trooper Rae arrived on scene at approximately 3:09 p.m. At that time, Lieutenant Anthony Castaldo was using the PA system in his cruiser to speak with Mr. Swanson. The Lieutenant asked Mr. Swanson to come outside and

Speak with him, but Mr. Swanson did not comply. At this point, Trooper Rae took over communication efforts with Mr. Swanson.

Using the PA system, Trooper Rae introduced herself to Mr. Swanson and asked him to come outside and speak with her. Trooper Rae explained to Mr. Swanson that because of the active warrants for his arrest, law enforcement would not be leaving until they spoke with him. The Trooper also advised Mr. Swanson that no one was there to hurt him, and that law enforcement wanted to resolve the situation in a safe manner for everyone. Trooper Rae repeated the above information multiple times with no response. The Trooper also requested that Mr. Swanson reconnect his landline telephone so the Trooper could speak to him via phone rather than PA.³²

After attempting to hail Mr. Swanson for fifteen to twenty minutes, Trooper Rae heard two or three distinct gunshots coming from the direction of Mr. Swanson's residence. Following the gunshots, Trooper Rae stopped hailing Mr. Swanson while officers checked to make sure no one on the perimeter was hurt. At this point, Sergeant Nicholas Levesque requested a full SWAT Unit activation.

Trooper Charles Newton, also of the Crisis Negotiation Unit, arrived on scene, and Trooper Rae was asked to assist with shutting Oakwood Drive down for other motorists. During this time, Trooper Rae made contact with Patricia Swanson, Mr. Swanson's mother. Mrs. Swanson seemed hesitant to speak with her and told Trooper Rae she had IEA paperwork for Mr. Swanson. Mrs. Swanson said Mr. Swanson was bipolar and began having problems with his medication four to six months ago. Mrs. Swanson provided additional background information as to Mr. Swanson and where he may keep firearms, if he had any.

³² Earlier efforts to call the residence were unsuccessful, leading investigators to believe that Mr. Swanson had disconnected the residence's phone line.

While Trooper Rae was speaking with Mrs. Swanson, Trooper Newton continued hailing Mr. Swanson from the PA. Mr. Swanson yelled back but continued to be uncooperative. The BEAR arrived on scene at approximately 6:00 p.m., and was thereafter parked in the driveway of the residence. Troopers Newton and Rae got into the BEAR and Trooper Newton continued hailing Mr. Swanson from it. Trooper Newton advised Mr. Swanson that there was a warrant for his arrest and that he needed to come outside with his hands up, with nothing in his hands, and that he needed to follow orders once outside. Mr. Swanson did not comply.

Between 6:15 p.m. and 7:00 p.m., Troopers Newton and Rae continued hailing Mr. Swanson. Mr. Swanson could be heard yelling back but was rarely intelligible. At one point, Mr. Swanson yelled, in substance, “everybody knows . . . everybody knows” and also stated that he had killed his mother and that her body was in the basement. Mr. Swanson did not show any sign of wanting to speak to or cooperate with law enforcement. Trooper Rae observed that Mr. Swanson had only become further agitated.

At about 7:00 p.m., the SWAT Unit began deploying non-lethal gas into the residence. Shortly thereafter, Mr. Swanson used the buttstock of a rifle to break a window. Mr. Swanson also came to the front door, opened it, yelled at Troopers, and then slammed the door. Troopers Newton and Rae continued to try to hail Mr. Swanson, with no success. Trooper Rae also continued to try Mr. Swanson’s telephone, but it remained disconnected throughout the standoff.

At about 7:46 p.m., Trooper Rae heard multiple, loud gunshots followed by loud, rapid fire gunshots. Thereafter, SWAT members advised that Mr. Swanson was down on the ground, on the C-side of the property. Mr. Swanson was taken into custody. While being transported to the ambulance, Trooper Rae heard Mr. Swanson yelling, in substance, “I’m alive . . . I’m still alive.”

3. Trooper Matthew Merrill

On November 7, 2019, at about 3:40 p.m., Trooper Matthew Merrill responded to 35 Oakwood Drive in Ossipee. Trooper Merrill was assigned to provide perimeter coverage on the B-side of the property, with Sergeant Michael Cedrone who was equipped with a gas launcher. From his position, Trooper Merrill heard State Police negotiators instruct Mr. Swanson multiple times to exit the front of the residence with his hands up, visible, and empty. In response, the Trooper heard Mr. Swanson swear and yell that he would not come out. The Trooper observed Mr. Swanson communicating from a second-floor, B-side window of the residence.

After Sergeant Cedrone deployed gas into the residence, using the second-floor, B-side window that Mr. Swanson had been using to yell out of, Trooper Merrill observed Mr. Swanson come to the window, continue to yell, and later break out the window with what appeared to be the buttstock of a rifle. The Trooper communicated this conduct to the other SWAT members via radio.

Thereafter, Trooper Merrill and Sergeant Cedrone moved into a B-side perimeter position that allowed Sergeant Cedrone to deploy gas rounds deeper into the residence from within the wood line, approximately forty feet away from the building. From this position, Trooper Merrill could see Mr. Swanson inside the house. He appeared to be covering his face with a cloth and was yelling that he would not come out. After Sergeant Cedrone deployed additional gas rounds into the first floor of the residence, Trooper Merrill observed Mr. Swanson move toward the C-side of the residence and heard Trooper First Class Nicholas Cyr state over the radio that it appeared Mr. Swanson was holding a rifle. Immediately thereafter, Trooper Merrill observed Mr. Swanson outside of the residence on the B-side of the property, and he told Sergeant Cedrone that Mr. Swanson was now outside.

Trooper Merrill saw Mr. Swanson walking towards his and Sergeant Cedrone's position but could see only parts of his body and head through the foliage. As Trooper Merrill began to transmit over the radio that Mr. Swanson was now outside, he heard the chambering of a round in a firearm. Simultaneously, he saw Mr. Swanson turn towards his and Sergeant Cedrone's position and it appeared that Mr. Swanson was holding a rifle. At this time, Trooper Merrill believed that Mr. Swanson might be aware of their position and that he was ready to fire upon them.

Given Mr. Swanson's earlier statements, that he was going to shoot or kill his neighbors and/or responding officers, Trooper Merrill believed that if Mr. Swanson was aware of their position, he would fire, and that that was his intent as he had exited the residence with a firearm, contrary to all instructions issued to him throughout the evening. Trooper Merrill began to reposition himself to engage Mr. Swanson with his rifle. As he did so, he heard Sergeant Cedrone fire his service rifle. He then heard Mr. Swanson yell, and while he could not see Mr. Swanson at this point, it sounded to the Trooper as if Mr. Swanson was moving towards the C-side of the property. Trooper Merrill was concerned that Mr. Swanson was attempting to flank their or other Troopers' perimeter positions. Trooper Merrill then heard discharging firearms from the A/B corner of the property. Following this, it was transmitted over the radio that Mr. Swanson was down on the ground near the C-side of the property.

When Mr. Swanson was taken into custody, Trooper Merrill saw he was conscious and alert, yelling for the SWAT members to "finish [him] off." Trooper Merrill also observed a rifle at Mr. Swanson's feet. The rifle was moved to prevent Mr. Swanson from accessing it. Mr. Swanson was wearing shorts, which were removed during the rendering of medical aid. When

they were removed, several rounds of ammunition were pulled from the pockets and left on the ground.

Ultimately, Mr. Swanson was transported via ambulance to a hospital. Trooper Merrill remained with the rifle and ammunition that was left on the ground until he was relieved by a local law enforcement officer.

4. Sergeant Christopher Ladd

On November 7, 2019, at about 3:38 p.m., Sergeant Christopher Ladd of the New Hampshire State Police SWAT Unit responded to Deer Cove Road in Ossipee, which had been designated as the staging area for the SWAT call. Prior to arrival, he had been advised that a male subject, later identified as John Swanson, had allegedly fired upon law enforcement officers while they were attempting to arrest him on warrants for criminal threatening.

Upon his arrival, Sergeant Ladd was assigned a position in the BEAR as the tactical medic. The BEAR was positioned in the driveway. While in the BEAR, the Sergeant heard members of the State Police Crisis Negotiation Unit give clear instructions to Mr. Swanson to exit through the front door of the residence with his hands up and empty. Mr. Swanson was told on several occasions that there was an arrest warrant in place, and he needed to comply with all verbal commands given to him. On several occasions, the Sergeant could hear Mr. Swanson yelling from inside the house but could not make out any specific statements.

Ultimately, it was determined that gas rounds would be deployed into the residence. After the initial deployment of gas rounds, it was communicated over the radio that Mr. Swanson had broken a second-floor window with what appeared to be the buttstock of a rifle. Throughout the deployment of gas rounds, Sergeant Ladd heard members of the Crisis Negotiation Unit continue to communicate with Mr. Swanson, advising him that they had a warrant for his arrest

and that they were not going away. They continued to tell him that he needed to exit the front of the residence with his hands up and empty. Each time they communicated with him, he could be heard yelling and shouting from inside the residence.

At one point, Mr. Swanson opened the front door, stuck his head outside, yelled in the direction of the BEAR, and then slammed the door shut. At another point, Trooper First Class Shane Larkin, who was also in the rear of the BEAR, opened the rear doors of the truck to try to discern where Mr. Swanson's voice was coming from. Trooper First Class Nicholas Cyr then communicated over the radio that he could see Mr. Swanson on the first floor of the residence and that he appeared to be holding a rifle.

Shortly thereafter, Sergeant Ladd heard the transmission from a perimeter unit that they believed Mr. Swanson was outside. Sergeant Ladd then heard a quick burst of gunfire – three to five rounds. The Sergeant believed this initial gunfire was louder than the SWAT members' suppressed rounds would have been. The Sergeant then heard two more volleys of gunfire.

Trooper First Class Cyr then communicated over the radio that Mr. Swanson was down on the ground towards the rear of the property. Sergeant Ladd repositioned himself to outside of the BEAR. The Sergeant could see Mr. Swanson lying on the ground with his back to the Sergeant, and he could see that there was blood on Mr. Swanson. At this same time, Trooper First Class Cyr was shouting verbal commands to Mr. Swanson, and Mr. Swanson was not complying.

Sergeant Ladd heard via radio that Mr. Swanson had a rifle by his side. At that point, Sergeant Gary Ingham deployed his police dog, and Mr. Swanson was taken into custody. As Sergeant Ladd approached Mr. Swanson, he observed a black rifle with a tactical stock and magazine inserted into it. He also observed an injury to Mr. Swanson's forearm. While EMS

personnel were assessing Mr. Swanson, Mr. Swanson yelled, in substance, for SWAT members to “finish [him] off” and to “shoot [him] in the face.” As EMS removed Mr. Swanson’s shorts, several loose rounds of ammunition were pulled from his shorts pocket.

Sergeant Ladd assisted EMS in getting Mr. Swanson onto the stretcher, at which point Mr. Swanson yelled enthusiastically, “I’m alive!” Mr. Swanson was thereafter transported to a hospital.

5. Trooper Anthony Cattabriga

On November 7, 2019, at about 3:30 p.m., Trooper Anthony Cattabriga was advised of a SWAT Unit activation to 35 Oakwood Drive in Ossipee, regarding a barricaded male subject, later identified as John Swanson. Trooper Cattabriga arrived on scene at about 5:36 p.m.

Upon arrival, Trooper Cattabriga learned that Mr. Swanson was alone in the residence, had a warrant for criminal threatening, and had rated high on a warrant service risk assessment. He was further advised that when law enforcement officers had been on scene earlier that day, Mr. Swanson had reportedly fired rounds from a long gun out the back of the residence, prompting the full SWAT activation.

Trooper Cattabriga, along with his K-9, took a perimeter position on the D-side of the property. From his position, Trooper Cattabriga heard crisis negotiators hailing Mr. Swanson, asking him to come outside and speak with them. The negotiators repeatedly advised Mr. Swanson that they had a warrant for his arrest, and that they were not going away. Trooper Cattabriga heard Mr. Swanson yelling back to the negotiators but could not understand what he was saying.

At some point, gas rounds were introduced into the residence. Thereafter, Trooper Cattabriga heard the distinct sound of a window breaking, and heard over the radio that Mr.

Swanson had broken out a window with the buttstock of a rifle. At this point, Trooper Cattabriga had significant concerns for his safety and for the safety of the other law enforcement officers at the scene.

Thereafter, Trooper Cattabriga heard what he believed to be about six rifle rounds being fired in rapid succession on the B-side of the property. Based upon the loud volume of the gunshots, the Trooper believed that the gunshots came from outside of the residence and from an unsuppressed firearm. The Trooper believed that the shots were fired by Mr. Swanson, because he knew that all the SWAT members positioned on the perimeter were armed with suppressed rifles. The Trooper then heard a volley of gunfire from a rifle with a suppressor. This volley continued for a couple of seconds.

It was then communicated that Mr. Swanson was down on the ground on the C-side of the property. Trooper Cattabriga repositioned himself and his K9 to the C/D corner of the property. From this position, he heard Trooper First Class Nicholas Cyr loudly ordering Mr. Swanson not to move on numerous occasions. Shortly thereafter, Trooper Cattabriga was advised that Mr. Swanson was in custody.

6. Sergeant Gary Ingham

Sergeant Gary Ingham was interviewed by members of the Office of the Attorney General and investigators from the New Hampshire State Police Major Crime Unit in the presence of his counsel on November 26, 2019. Sergeant Ingham has been a member of the New Hampshire State Police for sixteen years. He has also been a member of the New Hampshire State Police K-9 Unit for the past thirteen years and New Hampshire State Police SWAT Unit for the past eight years. Prior to joining the State Police, Sergeant Ingham was a member of the United States Marine Corps for four years.

On November 7, 2019, Sergeant Ingham worked a daytime detail. After the detail ended, the Sergeant received the SWAT activation to Ossipee. As a result, the Sergeant responded to the area of 35 Oakwood Drive with his K-9 dog, Grunt, arriving at about 6:00 p.m. Upon arrival, Sergeant Ingham equipped Grunt with a protective vest, which identified the dog as a State Police K-9 unit. The Sergeant and Grunt were positioned in the BEAR, which was parked in the driveway of the residence.

From his position in the BEAR, Sergeant Ingham heard the State Police negotiators tell Mr. Swanson that they were there to help him. He also heard the negotiators ask Mr. Swanson to come out of the residence with nothing in his hands. In response, the Sergeant could hear Mr. Swanson yelling from inside the residence but could not understand what he was saying.

Eventually, it was determined that the SWAT Unit would move forward with a gas plan. During the execution of the plan, the Sergeant learned that the SWAT members deploying the gas were running low and needed to be resupplied with additional gas rounds. As a result, Sergeant Ingham and Trooper First Class Shane Larkin, began to prepare bags of gas rounds from their position in the BEAR for delivery to the perimeter units. While doing so, they propped open the back doors to the BEAR, which requires metal latches to be dropped into position to keep the doors open. When the rear doors to the BEAR are open, the Troopers inside the truck are very exposed, and in a very vulnerable position. If an armed person came around to the back of the truck, they would not have time to get ready to defend themselves. Troopers in the BEAR rely upon Troopers on the perimeter to protect them in such situations.

While preparing the bags of gas rounds, Sergeant Ingham heard one unsuppressed gunshot. The Sergeant knew that the gunshot had not come from any SWAT members, because all the SWAT members on the perimeter used suppressed rifles, which minimizes the sound their

rifles make when fired. The Sergeant then heard multiple suppressed gunshots coming from the B-side of the property. Shortly thereafter, he heard, over the radio, that Mr. Swanson was down in the backyard.

Sergeant Ingham told the perimeter units to hold their positions, so he could determine if his police dog could assist in the apprehension of Mr. Swanson. After exiting the BEAR and moving towards the B-side of the property, the Sergeant heard SWAT members giving Mr. Swanson commands not to move and to show his hands, but Mr. Swanson did not comply. The Sergeant observed Mr. Swanson laying on the grass in the backyard. The Sergeant could see Mr. Swanson's back and legs, but could not see his hands, as he was facing away from the Sergeant. The Sergeant was concerned that Mr. Swanson could have a weapon in his hands.

Sergeant Ingham believed that his K9 could be useful in two ways: (1) to help pull Mr. Swanson into a position where the SWAT members would be able to see his hands; and (2) when the dog made contact with Mr. Swanson, it would most likely cause Mr. Swanson to use his hands in an attempt to get the police dog off him, which would allow the Troopers to see both of Mr. Swanson's hands and not use a firearm or other weapon against the officers.

Ultimately, Sergeant Ingham deployed Grunt on a long leash, and the dog bit Mr. Swanson. In response, Mr. Swanson turned and began punching and hitting Grunt in the face. Members of the SWAT Unit yelled at Mr. Swanson to stop hitting the dog, but he did not comply. At some point, the police dog made a loud noise and released from Mr. Swanson. It is not normal for Grunt to release prior to receiving the command to do so. The Sergeant gave Grunt the command to reengage, and the dog did.

During Mr. Swanson's altercation with Grunt, SWAT members were able to confirm that he was not holding a weapon. They then quickly approached Mr. Swanson, and placed him into

custody, while Sergeant Ingham removed the dog. When the Sergeant approached Mr. Swanson, the Sergeant observed a rifle beside him.

Shortly thereafter, Sergeant Ingham conducted a visual check of Grunt, and did not observe any significant injuries. The next day, the Sergeant conduct a subsequent visual check of Grunt and observed that his left eye was blood shot, as if the dog had been poked in the eye.

C. Private Citizen Interviews

1. Patricia Swanson

Patricia Swanson was interviewed by New Hampshire State Police on November 8, 2019. Mrs. Swanson's sister, Lorraine Kelly, who resides in Exeter, New Hampshire, was also present during the interview. Mrs. Swanson is John Swanson's mother. She owns the residence at 35 Oakwood Drive in Ossipee. Mr. Swanson has lived with Mrs. Swanson for a year or more. No one else resided in the home. At the time of the incident, Mr. Swanson was unemployed and received benefits through Veterans Affairs and Social Security.

Mrs. Swanson reported that Mr. Swanson was diagnosed with bipolar disorder when he was approximately sixteen years old. When Mr. Swanson has an episode, he gets very angry. He has been violent in the past, but not towards Mrs. Swanson. Mrs. Swanson is afraid of Mr. Swanson when he has an episode. When Mr. Swanson would act up, Mrs. Swanson would direct him to go upstairs to his room. Of late, Mr. Swanson would come down from his room after acting up and would apologize to Mrs. Swanson and tell her he loved her. Mr. Swanson had recently purchased a rifle to use for bear hunting, and Mrs. Swanson was unaware as to whether Mr. Swanson had any other guns.

Mr. Swanson had been taking the medication quetiapine (also known as Seroquel) for about a year and it was working well.³³ Approximately three to five months before the shooting incident, the medication began causing Mr. Swanson to have issues with his throat and the Veterans Affairs Hospital switched his medication to something she felt did not work as well.

On November 4, 2019, Mrs. Swanson had planned to use her weekly bridge game as an excuse to get out of the residence without making Mr. Swanson suspicious, but she misspoke and told a friend on the phone that she was not going to bridge. At about 3:30 a.m. that day, Mrs. Swanson was worried for her safety because of Mr. Swanson's behavior. Mrs. Swanson got into her vehicle but was concerned that opening the garage door would alert Mr. Swanson. As a result, Mrs. Swanson called Ms. Baker and requested that Ms. Baker call the police and ask them to come to the residence without sirens or lights so that Mr. Swanson would not be alerted.

About five minutes after getting off the phone with Ms. Baker, Mrs. Swanson left her residence and met with police who were waiting at the end of her street. Mrs. Swanson was shaking, and an ambulance was called and transported her to a hospital where she was treated for high blood pressure and anxiety. From the hospital, Mrs. Swanson went to her niece, Dr. Kathleen Kelly's residence, which she considered to be a safe place. In addition to Dr. Kelly's residence, Mrs. Swanson would also periodically stay with Ms. Baker or at a motel when she felt she needed to get away from Mr. Swanson.

On November 6, 2019, Mrs. Swanson spent significant time on the phone with Veterans Affairs attempting to get help for Mr. Swanson. On November 7, 2019, the day of the incident, Mrs. Swanson applied for and was granted an order of protection against Mr. Swanson that would be in place for thirty days.

³³ Quetiapine has been approved by the U.S. Food and Drug Administration (FDA) as an antipsychotic drug that can be prescribed to treat diagnosed schizophrenia, bipolar disorder, and depression.

2. Dr. Kathleen Kelly

Dr. Kathleen Kelly was interviewed by New Hampshire State Police on November 8, 2019. Dr. Kelly is John Swanson's cousin. She told investigators that historically Mr. Swanson has had mental health issues and has had challenges when he does not have access to healthcare. When Mr. Swanson is medicated, he is appropriate, helpful, and loving. When he is not medicated, Mr. Swanson can be frightening. Dr. Kelly's aunt, Patricia Swanson, has reached out on several occasions asking to stay with Dr. Kelly when Mr. Swanson has been having an episode. Dr. Kelly believed that Mr. Swanson had stopped taking his regular medication a week or two prior to the shooting incident, but she was not certain.

On November 2, 2019, Mrs. Swanson called Dr. Kelly and stated that she was having a problem and needed to come stay at Dr. Kelly's residence. Mrs. Swanson showed up in her bedroom slippers as a result of leaving her residence very quickly. Mrs. Swanson spent the night and reported to Dr. Kelly that Mr. Swanson had been saying things like, "I shouldn't have gotten us this big television because now they can hear us, now they can listen in on us" and that the television was talking to him. According to Dr. Kelly, Mrs. Swanson would tell Mr. Swanson that she was going to run errands but would instead drive to Dr. Kelly's residence where she would call Mr. Swanson and tell him she was at her friend "Mary's" residence. Mary is a made-up friend who does not exist.

On November 3, 2019, Mrs. Swanson spoke with Mr. Swanson by phone, and it seemed like things were better so Mrs. Swanson returned to Ossipee that afternoon. On November 4, 2019, at about 3:30 a.m., Mrs. Swanson called Dr. Kelly's husband and told him she was in an ambulance going to the hospital and that Mr. Swanson was being transported to another hospital. From the hospital, Mrs. Swanson went to stay with Dr. Kelly.

On November 5, 2019, while in Dr. Kelly's presence, Mrs. Swanson took several calls on her cellular phone from Mr. Swanson during which he yelled and swore at her. Mr. Swanson then began calling other family members and telling them he could not find his mother and believed that she may have been in an accident. This was after Dr. Kelly heard Mrs. Swanson tell Mr. Swanson that she was safe and fine. On November 6, 2019, Dr. Kelly spoke with Ossipee police officers and ultimately Mrs. Swanson went to Ossipee on November 7, 2019, to obtain the temporary protective order against Mr. Swanson.

3. Larida Nuttal

Larida Nuttal was interviewed by New Hampshire State Police on November 8, 2019. Ms. Nuttal is a nurse at the Manchester Veterans Affairs Hospital. She had never met John Swanson face-to-face but stated that Mr. Swanson had been on the same medication for a while and his prescription was filled regularly. She was aware that Mr. Swanson had reported difficulty with swallowing as a result of his medication and that his medication was adjusted in August 2019. Following the adjustment, Mr. Swanson reported that the medication was working well. Ms. Nuttall had recently heard concerns about Mr. Swanson from his family, and had attempted to call Mr. Swanson on November 6, 2019, but he kept hanging up on her. As a result, she called local law enforcement, requesting a welfare check for him.

4. Christopher Goumas

On November 8, and 9, 2019, Christopher Goumas was interviewed by the Ossipee Police Department. Mr. Goumas is the owner of Ossipee Lake Country Store located at the intersection of Deer Cove Road and Route 16. He has known John Swanson for more than twenty years and described Mr. Swanson as "Dr. Jekyll and Mr. Hyde," explaining that Mr. Swanson is a different person on different days.

On November 6, 2019, Mr. Swanson visited Mr. Goumas' store. The country store was equipped with surveillance equipment. Mr. Goumas allowed law enforcement to obtain a copy of the portion of the surveillance video depicting Mr. Swanson's November 6, 2019, visit to the store. In the video, Mr. Swanson was seen walking in the parking lot of the store with a rifle in his hand. The rifle appears to be dark in color and has a stand mounted on the front. The magazine in the rifle was curved in shape. As Mr. Swanson entered the store, he approached the counter and placed the rifle on the floor while he made his purchase. Mr. Goumas and Mr. Swanson spoke about the rifle, and he remembered it being a .223 caliber rifle. After making his purchase, Mr. Swanson exited the store.

D. Interviews with John Swanson

1. November 12, 2019 – Portsmouth Regional Hospital

On November 12, 2019, investigators from the New Hampshire State Police attempted to speak with John Swanson. At the time, Mr. Swanson was in the Intensive Care Unit at Portsmouth Regional Hospital. After the investigators introduced themselves and asked if they could speak with him, Mr. Swanson immediately stated that he would like to speak with a lawyer before speaking with the police. Investigators told Mr. Swanson that that was fine and that they would not question him and not be able to speak with him. Mr. Swanson, without prompting, interjected that he wanted to say a few things. Mr. Swanson told the investigators that he had not known the police were at his residence, that he thought someone had been breaking into his residence, and that the incident was a big misunderstanding. Mr. Swanson repeated the above statements multiple times and then asked if his mother was alive. Investigators told Mr. Swanson that his mother was safe, and Mr. Swanson told them he had not heard from her.

2. January 8, 2020 – Proffer interview

On January 8, 2020, John Swanson was interviewed under the parameters of a “proffer letter” sent to his attorney, whereby the truthful statements and information that he gave in the interview could not be used against him in any criminal matter. In that interview, Mr. Swanson reported the following.

For about the past five years, Mr. Swanson has lived with his mother, Patricia Swanson, at her residence at 35 Oakwood Drive in Ossipee, New Hampshire. In exchange for Mr. Swanson maintaining the residence, his mother paid the bills. Mr. Swanson did not have a cellular telephone, but the residence had a landline.

About a day or two before the shooting incident, at about 5:30 a.m., the police knocked on the front door of the residence. Prior to opening the door, Mr. Swanson had a gun in his hand, but put it down when he realized it was the police knocking. Upon opening the door, Mr. Swanson stated, in substance, “I could have killed you, that is a good way to get yourself shot, banging on the door at like 5:30, 6:00 in the morning.”

The police were at the residence to check on Mr. Swanson. Ultimately, the police had Mr. Swanson transported to Memorial Hospital. He described his interaction with police during this occasion as “fine” and they shook hands before parting ways. Mr. Swanson checked out of the hospital that same day and returned home. Mr. Swanson does not remember making any phone calls to the police that day or the day of the shooting incident.

On November 7, 2019, the day of the shooting, Mr. Swanson walked to Ossipee Lake County Store to buy a sandwich, soda, and cigarettes. Upon arriving back at his residence, Mr. Swanson heard what he described as a female neighbor yelling but could not make out what she

was saying. In response, Mr. Swanson nodded and waved, but did not say anything to her. Other than this trip to the store, Mr. Swanson reported he was at the residence all day.

Later that day, Mr. Swanson awoke in his bedroom, and opened the sliding glass door, which leads to a small balcony, so he could smoke a cigarette. When he did so, he saw several police officers with rifles positioned on the golf course behind the residence about one hundred yards away. Mr. Swanson then looked out the front of the residence and saw police vehicles in the cul-de-sac at the end of the driveway. Mr. Swanson thought the police were there to speak with a neighbor, not him, as he had just recently had an interaction with the police a day or two earlier, during which everything was fine.

Mr. Swanson reported that he heard a lot of commotion and yelling from the police but could not understand what the police were saying. Mr. Swanson does not remember having any communications with the police and does not recall talking to them from a window of the residence. At some point, Mr. Swanson heard a male officer, who was using a bullhorn, say, in substance, “Swanson come out with your guns.” Mr. Swanson remembers thinking that he could not exit the residence with his guns because he had six or seven guns, including an “AK” rifle, .270-caliber rifle, .308-caliber rifle, .30-60 rifle, .357 revolver, and a muzzleloader.³⁴

At some point, the police shot tear gas into the residence. Mr. Swanson reported that in doing so, they broke windows including the windows in the second-floor bathroom and first-floor kitchen. Mr. Swanson denied that he broke out the bathroom window on the second floor of the residence. In response to the gas, Mr. Swanson covered his mouth with a towel.

³⁴ Mr. Swanson had had his AK rifle for about nine months at the time of the shooting incident. About two days prior to the incident, he had used the AK rifle for target practice, which was the first time he had shot it. According to Mr. Swanson, during target practice, the AK had “fired beautifully.”

At some point, Mr. Swanson exited the residence through the exterior kitchen door on the B-side of the residence. He then walked down the exterior stairs and onto the grass. When interviewed, Mr. Swanson said that at this time he did not know whether there were police on this side of the property but could hear the male police officer on the bullhorn, who he believed was positioned in the cul-de-sac. Mr. Swanson denied seeing any police vehicles in the driveway of the residence.

When he exited, Mr. Swanson had his AK rifle in his left hand, and he was holding it in front of the magazine.³⁵ Fig. 5. He was holding the AK rifle in a horizontal position, parallel to the ground. He pointed the gun towards the woods, where he believed no police were located. At this time, the rifle had about twenty bullets in the magazine, and none in the chamber. He stated that he chose to bring the AK rifle when he exited the residence, because he believed the police would want his most dangerous firearm.

Upon exiting the residence, Mr. Swanson heard the male officer on the bullhorn say, in substance, “Bring your gun out and lay face down on the ground and put your hands on your head.” Mr. Swanson said he followed these instructions: he put his gun down, laid down on his stomach by a tree, and put his hands on the back of his head. Fig. 6.³⁶ Mr. Swanson denied firing his gun while outside. He also denied ever firing a firearm while inside of his house.

Mr. Swanson said that after he laid down, the police then stood over him and shot him five or six times with pistols, shooting him in both hips, spine, tailbone, and left shoulder. While they were shooting him, Mr. Swanson begged them to shoot him in the head, because he knew he would never be the same. He reported that after the shooting, a “guard dog chewed [him] up.”

³⁵ Mr. Swanson stated that he held the AK rifle with only his left hand, because it required two hands to fire it.

³⁶ During the interview, Mr. Swanson pointed to the area indicated by the yellow arrow, as the location where he laid down and was shot.

Mr. Swanson reported that he had no surveillance equipment at the residence, and he is not aware of any video that captured the incident.

At the time of the incident, Mr. Swanson reported taking the prescription drugs zolpidem and vistaril for sleep, and acetaminophen for back pain. Mr. Swanson denied having any mental health issues, but stated that he had been prescribed quetiapine, which is used for people with bipolar disorder. He stated he took quetiapine for his insomnia, not for a bipolar disorder. Mr. Swanson stopped taking quetiapine about six to nine months prior to the shooting incident, because he believed he was having anaphylactic reactions to the medication and his doctor told him to stop taking it.

E. John Swanson's Injuries

After the shooting incident, John Swanson was taken by ambulance to Huggins Hospital. Shortly thereafter, he was moved to Portsmouth Regional Hospital for further treatment. Mr. Swanson later gave consent for investigators to obtain his medical records from both Huggins Hospital and Portsmouth Regional Hospital.³⁷

The medical records indicate that Mr. Swanson suffered four gunshot wounds. One wound was to his left shoulder. The other gunshot wounds were to Mr. Swanson's right forearm and left and right buttock. The shots to Mr. Swanson's buttock fractured several bones in that area. Mr. Swanson also had puncture wounds on his left arm and left leg, consistent with being bitten by a dog.

F. Physical Evidence

Investigators inspected and inventoried the Heckler & Koch 416 rifles belonging to Sergeant Nicholas Levesque, Trooper First Class Nicholas Cyr, and Sergeant Michael Cedrone

³⁷ Mr. Swanson also provided consent for investigators to obtain his medical records from Memorial Hospital for his visit on November 4, 2019.

the day after the incident. Sergeant Levesque's rifle had one Winchester .223 Remington round in the chamber and fourteen Winchester .223 Remington rounds in the magazine, indicating he fired his weapon thirteen times during the incident. Trooper First Class Nicholas Cyr's rifle had one Winchester .223 Remington round in the chamber and seventeen Winchester .223 Remington rounds in the magazine, indicating he fired his weapon ten times during the incident. Sergeant Cedrone's rifle had one Winchester .223 Remington round in the chamber and eighteen Winchester .223 Remington rounds in the magazine, indicating he fired his weapon eight times during the incident, including the one-round malfunction.³⁸

On November 8, 9, and 16, 2019, investigators searched 35 Oakwood Drive. During the searches of the property, a State Police 40mm gas projectile launcher was recovered from the ground behind the woodpile on the B-side of the property. In addition, twenty-seven Winchester .223 Remington spent shell casings and one Winchester .223 Remington round were recovered from the B-side of the property. Specifically, one live round³⁹ and eight spent shell casings were found by the woodpile,⁴⁰ eight spent shell casings were found between a tree and the pontoon

³⁸ The Troopers also had additional magazines in their possession at the time of the shooting incident. These magazines were inventoried and were all loaded with the standard twenty-eight rounds in each.

³⁹ The live round is likely the round Sergeant Cedrone ejected from his rifle following its malfunction.

⁴⁰ The live round and spent shell casing were found in the area of Sergeant Cedrone's perimeter position. Therefore, it is likely that they came from his rifle. The inventory of the Sergeant's rifle after the shooting incident indicates that he fired his weapon a total of nine times, including the malfunction, during the shooting incident. Thus, it appears that investigators recovered all of the spent shell casings and the initial live round ejected during after the misfire resulting from the Sergeant's actions during the incident.

boat,⁴¹ five spent shell casings were located by the pontoon boat,⁴² and six were found in bushes between the pontoon boat and a vehicle.⁴³ Fig. 7.

Additionally, numerous bullet defects were observed in the siding, porch, and windows on the exterior, B-side of the residence, which were likely caused by the Troopers' gunfire. Investigators also observed several areas along the exterior, B-side of the residence, including the porch railing, that appeared to have blood and human tissue on them. They also observed damage from gas rounds in several windows of the residence.

Investigators also located what Mr. Swanson described as his AK rifle, a Century Arms RAS47 rifle, in the B/C corner of the backyard. Fig. 8. One live .762 Winchester round was in the chamber of the rifle, and there was an empty thirty-one round rifle magazine in the rifle. Testing confirmed that the rifle was operable.⁴⁴ Investigators did not recover any spent shell casings fired from this rifle outside of the residence; however, by the time investigators learned of the reports that Mr. Swanson had fired his rifle after exiting the residence, and returned to the property on November 16, 2019, to search for spent shell casings fired from his rifle, weather had moved in and a large portion of the search area had snow/ice covering it.

Near the area where the Century Arms RAS47 rifle was recovered from, investigators also recovered a pair of shorts. An empty rifle magazine was in the front, left pocket of the

⁴¹ These spent shell casing were found in the area of Trooper First Class Cyr's perimeter position. Therefore, it is likely that they came from his rifle. The inventory of the Trooper's rifle after the shooting incident indicates that he fired his weapon a total of ten times during the shooting incident. Thus, it appears that the investigators were unable to locate two of the Trooper's spent shell casings.

⁴² These spent shell casings were found in the area of Sergeant Levesque's initial perimeter position. Therefore, it is likely that they came from his rifle.

⁴³ These spent shell casings were found in the area of Sergeant Levesque's secondary perimeter position, after he moved to regain sight of Mr. Swanson. Therefore, it is likely that they came from his rifle. The inventory of the Sergeant's firearm after the shooting incident indicates that he fired his weapon thirteen times during the shooting incident. Thus, it appears that investigators were unable to locate two of the Sergeant's spent shell casings.

⁴⁴ The firearm was test fired and found to be operable by a criminalist at the New Hampshire State Police Forensic Laboratory.

shorts, and a .762 Winchester round was in the front, right pocket. There were also two unfired .762 Winchester rounds recovered from the ground in this area.

During the search of the inside of the residence, investigators recovered several firearms: a Savage Arms Inc. model 11 .308 caliber rifle, a Remington M783 .270 Winchester rifle, a CVA Optima .50 caliber muzzleloader, a Ruger GP100 .357 revolver, a Mossberg Hunter 12-gauge rifle, and a Ruger American .30-06 Springfield rifle. They also recovered numerous boxes of various ammunition, as well as numerous spent shell casings and several live rounds throughout the residence. Seven spent .762 Winchester shell casings were found on the floor outside of a cedar closet located on the second floor, D-side of the residence. Testing confirmed that these seven spent shell casings were likely fired from the AK rifle Mr. Swanson was holding when he exited the residence holding. These casings are also consistent with the gunshots law enforcement officers heard coming from the residence earlier in the day on November 7, 2019.⁴⁵

Investigators also observed bullet defects in the kitchen, a second-floor guest bedroom, and the lounge room located in the basement of the residence. Because of the location of these defects, investigators determined that they were caused by the Troopers firing from outside the residence on B-side of the property. Numerous bullet defects were also observed in the door of the cedar closet on the second floor, D-side of the residence, as well as inside the cedar closet and exiting the residence through a window inside the cedar closet. Because of where this closet is located within the residence, these defects could not have been caused by the Troopers firing at Mr. Swanson when he was outside from the exterior, B-side of the property.

⁴⁵ The rifle was test fired and the spent shell casing from the test fire was compared to one of the spent shell casings found on the floor outside of the cedar closet. After comparison, a criminalist at the New Hampshire State Police Forensic Laboratory was able to determine that the spent shell casing from the floor outside of the cedar closet was fired from the Savage Arms “AK” rifle Mr. Swanson had exited the residence with on November 7, 2019.

IV. APPLICABLE LAW AND LEGAL STANDARDS

New Hampshire's laws regarding self-defense, defense of others, and the use of physical force by law enforcement are set forth in RSA Chapter 627. Under RSA 627:5, II(a), a law enforcement officer, like a private citizen, is justified in using deadly force when he reasonably believes that such force is necessary to defend himself or a third person from what he reasonably believes to be the imminent use of deadly force. Under RSA 627:9, II, "deadly force" is defined as "any assault . . . which the actor commits with the purpose of causing or which he knows to create a substantial risk of causing death or serious bodily injury." "Purposely firing a weapon capable of causing serious bodily injury or death in the direction of another person . . . constitutes deadly force." RSA 627:9, II.

The phrase "reasonably believes" means that the actor "need not have been confronted with actual deadly peril, as long as he could reasonably believe the danger to be real." *State v. Gorham*, 120 N.H. 162, 163-64 (1980). The term "reasonable" is "determined by an objective standard." *State v. Leaf*, 137 N.H. 97, 99 (1993). As such, all of the circumstances surrounding the incident should be considered in determining whether the actor had a reasonable belief that deadly force was necessary to defend himself or another. When reviewing a deadly force incident, the actor's conduct should be viewed considering "the circumstances as they were presented to him at the time, and not necessarily as they appear upon detached reflection." *N.H. Criminal Jury Instructions*, 3.10. In other words, when analyzing the reasonableness of an actor's use of deadly force, the inquiry must focus on the situation from the standpoint of a reasonable person facing the same situation. That examination cannot be made with the benefit of hindsight. The amount of deadly force used by the actor to protect himself or another must be reasonable, and not excessive. *See State v. Etienne*, 163 N.H. 57, 70 (2011).

Federal cases, while largely addressing the civil standards that apply to federal civil rights lawsuits, provide some discussion of the “reasonableness” standard for the use of force by police officers that is useful in analyzing officer-involved use of force cases in this state. In *Graham v. Connor*, 490 U.S. 386 (1989), the United States Supreme Court stated that “[t]he ‘reasonableness’ of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight.” *Id.* at 396. The Court continued:

The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments—in circumstances that are tense, uncertain, and rapidly evolving—about the amount of force that is necessary in a particular situation.

Id. at 396-97; see also *Ryburn v. Huff*, 565 U.S. 469, 477 (2012).

The Eleventh Federal Circuit has noted that:

The Supreme Court has emphasized that there is no precise test or ‘magical on/off switch’ to determine when an officer is justified in using excessive or deadly force. Nor must every situation satisfy certain preconditions before deadly force can be used. Rather, the particular facts of each case must be analyzed to determine whether the force used was justified under the totality of the circumstances.

Garczynski v. Bradshaw, 573 F.3d 1158, 1166 (11th Cir. 2009) (citations omitted). That is because “the law does not require perfection – it requires objective reasonableness.” *Phillips v. Bradshaw*, No. 11-80002-CIV, 2013 WL 1296331, at *17 (S.D. Fl. Mar. 28, 2013). The law must account for the fact that dangerous situations often unfold quickly and law enforcement officers sometimes need to make quick decisions under less-than-ideal circumstances. See *Huff*, 565 U.S. at 477 (finding that appeals court panel “did not heed the District Court’s wise admonition that judges should be cautious about second-guessing a police officer’s assessment, made on the scene, of the danger presented by a particular situation”).

These are the legal standards that help guide the Attorney General's review of the use of deadly force by a law enforcement officer in New Hampshire.

V. ANALYSIS AND CONCLUSION

Based upon all the facts and circumstances of this case, the Attorney General has concluded that John Swanson created a dangerous situation when he exited his residence holding a loaded rifle, which he subsequently fired, and that it was reasonable for Troopers Nicholas Levesque, Nicholas Cyr, and Michael Cedrone to conclude that they faced an imminent threat of deadly force from Mr. Swanson, and to use deadly force against him in order to protect their own lives and the lives of their fellow Troopers.

At the outset, the law enforcement officers who responded to 35 Oakwood Drive on November 7, 2019, did so lawfully. Initially, they responded to the residence to serve Mr. Swanson with various paperwork, including arrest, IEA process, and search warrants. Thereafter, additional law enforcement officers responded to the residence for a report of a barricaded subject with shots fired. Many were also aware that Mr. Swanson had recently made threats towards law enforcement and members of the public that involved use of firearms. Moreover, given the belief that Mr. Swanson might have a firearm in his residence, the police reasonably made efforts to make contact with Mr. Swanson outside of his residence, which would have been a safer environment in which to speak with him. This is especially so when Mr. Swanson showed he could have chosen to respond safely just as he had two days earlier on November 4, 2019.

Despite being aware of the presence of police, Mr. Swanson exited his residence carrying a loaded rifle in a horizontal position, parallel to the ground, and pointing towards the B-side tree line. Although Mr. Swanson claimed that he was instructed to exit the residence with his guns,

several Troopers reported that they heard the State Police negotiators repeatedly instruct him to exit with his hands visible and empty. Not a single Trooper reported hearing negotiators tell Mr. Swanson to exit with guns. Moreover, the Troopers' representations that Mr. Swanson was told to exit with nothing in his hands not only comports with common sense and everyday experience but is also consistent with all the other efforts the police made to ensure their safety while attempting to make contact with Mr. Swanson.⁴⁶

As to the encounter that followed after Mr. Swanson exited the residence, at the outset, it is not unusual for there to be inconsistencies among eyewitness accounts, as well as mistakes made by otherwise credible and reliable eyewitnesses. This reality is particularly so in an event such as this. With that said, there are also aspects of the account provided by Mr. Swanson that cannot be reconciled with the accounts provided by Troopers Levesque, Cyr, and Cedrone. In particular, Mr. Swanson claimed that, after exiting the residence, he put down his rifle, laid down on his stomach, and put his hands behind his head, by a tree on the B-side of the property. He further claimed that after doing so the police stood over him and shot him multiple times in the back. By the Troopers' accounts, on the other hand, after exiting the residence, Mr. Swanson moved towards the B-side perimeter and BEAR, racked his rifle, and fired. After being fired upon, Mr. Swanson ran towards the backyard, the C-side of the property, before going down.

Reviewing all of the evidence, Mr. Swanson's account is not credible. That account is at odds not only with what the three Troopers who fired upon him reported, but also with what was heard by other Troopers on the perimeter and in the BEAR, several of who reported hearing a louder, unsuppressed gunshot prior to any suppressed gunfire.

⁴⁶ All the SWAT members on the perimeter wore tactical gear, including protective vests, camouflage clothing, helmets, police patches, as well as took positions that provided cover and concealment, such as behind trees, woodpiles, and a pontoon boat.

Mr. Swanson's account is also contrary to his statements prior to the shooting incident. In the days prior to the shooting, Mr. Swanson continuously called 911, complaining about law enforcement. During the calls, he was often aggressive, belligerent, and threatening. He repeatedly instructed dispatch not to send the police to his residence, and, on several occasions, threatened to shoot and kill any police who responded to his home. Although, Mr. Swanson claimed not to remember calling 911 in the days leading up to the shooting, his calls, and the statements made therein, were recorded, and reviewed.

Mr. Swanson also provided inconsistent accounts during the investigation of the shooting incident. When police spoke to him on November 12, 2019, Mr. Swanson told the investigators that he had not known the police were at his residence, that he thought someone had been breaking into his residence, and that the incident was a big misunderstanding. He made no such claims during his January 8, 2020, interview. By way of example, in his January interview, Mr. Swanson admitted that he knew it was the police at his residence. He explained that he had awoken on November 7, 2019, and when he looked outside, he saw several police officers behind his residence and police vehicles in the cul-de-sac in front of his residence. These inconsistencies simply cannot be reconciled, and lend credence to the Troopers' accounts, not Mr. Swanson's.

Finally, Mr. Swanson's account is at odds with the physical evidence. First, Mr. Swanson's rifle, shorts, and possessions pulled from his shorts pockets, were not found by the tree where he claimed to have laid down, but rather in the backyard, consistent with the Troopers' assertions that he ran towards the C-side of the property while being fired upon. Second, the Troopers' spent shell casings were not found by the tree where Mr. Swanson

claimed he laid down by, but rather in the four distinct areas that Troopers reported firing from.⁴⁷ The locations of the spent shell casings support that the Troopers did not stand over Mr. Swanson and shoot him, as Mr. Swanson claimed, but instead fired from their perimeter positions, as the Troopers all recounted. Third, there are bullet defects in the B-side siding of the residence, showing that the Troopers were shooting horizontally, not downward during the incident. Finally, investigators observed several areas along the exterior, B-side of the residence, including the railing on the porch, that appeared to have blood and human tissue on them. Again, supporting that the firing of the Troopers' weapons was horizontal in nature, not downward.

Based upon the credible and reliable information gathered from the investigation into Mr. Swanson's shooting, it is clear that Mr. Swanson exited his residence armed with a loaded rifle, despite directives to exit with his hands visible and empty. Mr. Swanson held the rifle in a horizontal position and pointed it towards the B-side property tree line. Mr. Swanson then racked and fired the weapon. All of these circumstances created an immediate life-threatening situation to Troopers Levesque, Cyr, and Cedrone. It was only after then that the Troopers fired their weapons at Mr. Swanson. Based upon all the facts and circumstances known to the Troopers when Mr. Swanson exited his residence on November 7, 2019, including his threats to shoot and/or kill private citizens and the police, his military ties, his score of thirty on the warrant service risk assessment, his mental health issues, his criminal history, his discharge of a firearm during the earlier encounter with police, and his immediate possession of a firearm, it was reasonable for the Troopers to believe that Mr. Swanson posed an imminent threat to their

⁴⁷ Sergeant Levesque told investigators that after firing from his initial position, he moved his position and fired again.

lives and the lives of their fellow Troopers, and also to believe that when they fired their service weapons Mr. Swanson had or was about to use deadly force against them.

Accordingly, Sergeant Nicholas Levesque, Trooper First Class Nicholas Cyr, and Sergeant Michael Cedrone of the New Hampshire State Police were legally justified in using deadly force against John Swanson, and no criminal charges will be filed against any of the Troopers for shooting Mr. Swanson.

The Carroll County Attorney's Office did bring criminal charges against Mr. Swanson related to this incident. Following competency proceedings in the Carroll County Superior Court, the Court dismissed the criminal charges against Mr. Swanson.



Fig. 1



Fig. 2



Fig. 3



Fig. 4



Fig. 5



Fig. 6

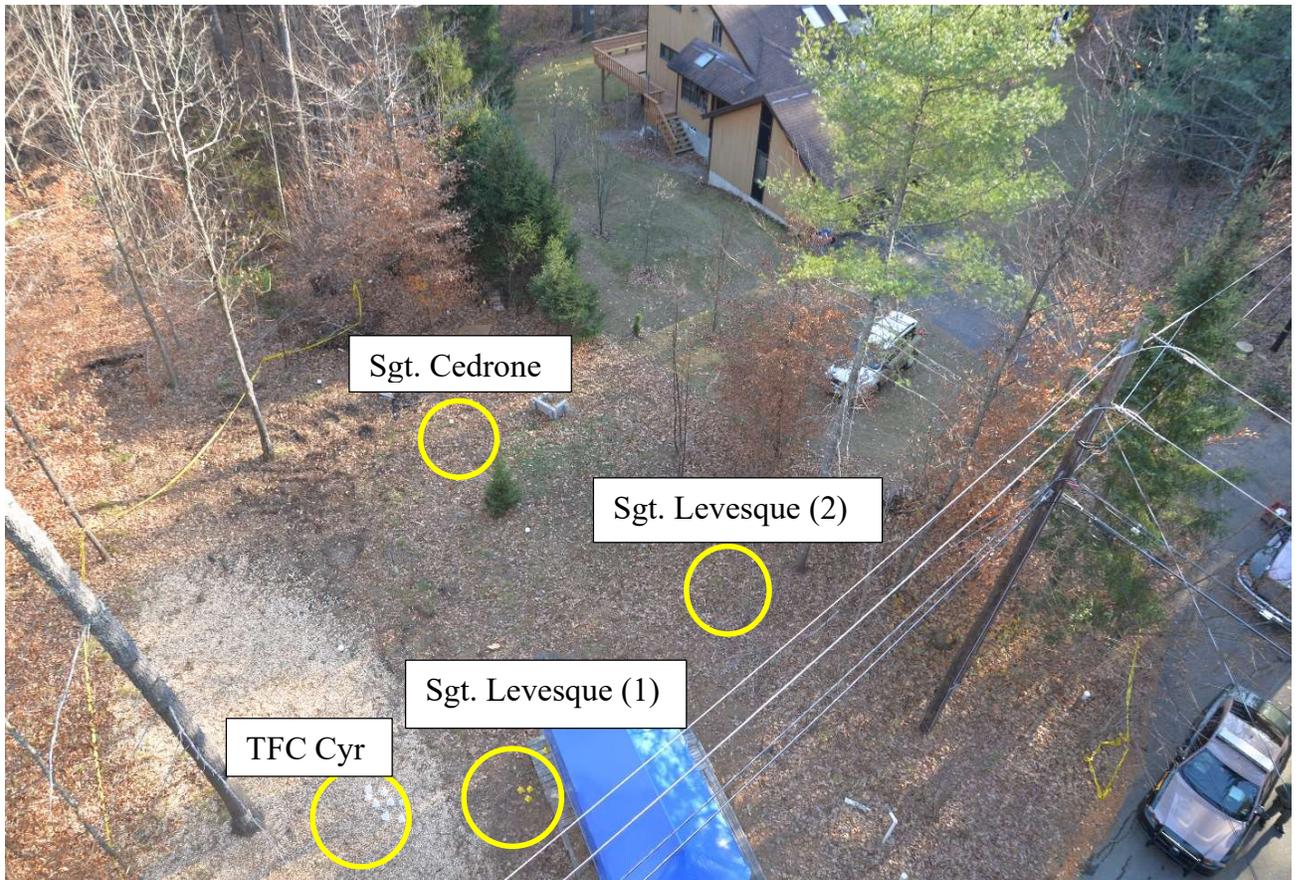


Fig. 7



Fig. 8